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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/626,430 | 07/27/2000 | David F. Bantz | YOR9-2000-0316 | 9978 |

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EXAMINER

LEZAK, ARRIENNE M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2143

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/626,430

Applicant(s)

BANTZ ET AL.

Examiner

Arrienne M. Lezak

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 10-17, 21-27, 30 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,812,533 to Cox. Cox discloses a system and method for service provisioning a customer with at least one software application from a service provider, comprising the steps of establishing a set of attributes of the service provision, (Col. 1, lines 6-12 and 31-43); selecting from said set of attributes for defining a Service Level Agreement (SLA) with the service provider; and provisioning the customer in accordance with constraints imposed by the SLA, (Col. 3, lines 52-63; Col. 45, lines 23-67; Col. 46, lines 1-37). Cox further discloses a method for transparently and flexibly re-provisioning the customer as needed, per the SLA, (Col. 4, lines 17-23, Col.5, lines 13-16, Col. 7, lines 6-16) and the use of a virtual service provider, (Col. 15, lines 10-60). Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Claims 1-4, 10-17, 21-27, 30 and 34-36.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-20, 24-26, 28-33, 35, and 36 are rejected under 35 U.S.C. 103(a) as obvious over Cox ('533). Cox is relied upon for the teachings as discussed above relative to Claims 1-4, 10-17, 21-27, 30 and 34-36 as interpreted above. In the alternative, Cox is further interpreted to disclose those limitations not specifically enumerated within Cox, which include the originations or destinations of data processing resource allocation or re-allocation, the attribute options, the use of a value-added services provider, or Internet (e-marketplace) application, (as required by Claims 5-20, 24-26, 28-33, 35, and 36 of the pending application).
5. To use the specifically enumerated originations or destinations for data processing resource allocation or re-allocation, the attribute options, the use of a value-added services provider, or the Internet (e-marketplace) application, (as stated in the pending application), within the Cox system and method for service provision in communication networks, would have been obvious to one of ordinary skill in this art at the time of invention by applicant, as examiner believes these limitations to be obvious when considered in light of Cox ('533).
6. The motivation to include all types and combinations of origination and destination data processing resources for the purposes of allocation and re-allocation is found within Cox as suggested by the need for flexibility in service provision, (Col. 1, lines 31-43; Col. 45, lines 23-28). A communications network, such as the one disclosed in Cox is not limited in its use of data processing resources, which in this case

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Examiner believes to include those resources deemed necessary to facilitate network activity, which is inclusive but not limited to customer data processing task requests.

7. The motivation to include all types of attribute options within Cox is suggested by the functionality comprising a service directory defining the one or more selected services available to that user, (Col. 3, lines 52-63) and the customer profile as defined by the rules, attributes and features that apply network wide, (Col. 43, lines 19-22; Col.42, lines 39-42). As Cox indicates the non-specific use of attributes, Examiner believes that the Cox attributes would be inclusive of those attributes specifically enumerated within the pending application.

8. The motivation to use a value-added service provider within Cox is suggested by the need for a service provider to be able to offer services, which are introduced quickly and flexibly, without undue delay or cost, (Col. 1, lines 24-27). Inclusive and obvious to a concern over cost would be the option to utilize a value-added service provider whenever permitted.

9. The motivation for an Internet application of Cox is suggested by reference to networks, particularly virtual networks, as indicated above. Moreover, the use of a virtual network as applied to the Internet was obvious at the time of the Cox application, as the Internet network was inexistence and capable for use as applied to Cox. Examiner further acknowledges that the communications network described is applicable to any network offering a variety of services to the customer while being able to add or modify the portfolio of services available, (Abstract). Thus, application of the

same to the provision of services, (as applied to software), would be obvious and inherent.

10. Thus, Claims 5-20, 24-26, 28-33, 35, and 36 are unpatentable over the teachings of Cox ('533).

11. Claims 27-34 and 36-40 are rejected under 35 U.S.C. 103(a) as obvious over Cox ('533) in view of US Patent 5,748,896 to Daly. Cox, again, is relied upon for the teachings as discussed above relative to Claims 1-4, 10-17, 21-27, 30 and 34-36. Though Cox discloses the incorporation of management aspects, (Col. 1, line 42-43), an alternative interpretation indicates the disclosure of limitations not specifically enumerated within Cox, such as the utilization of a system management server, personal computers, or the Internet (as required by Claims 27-34 and 36-40 in the pending application).

12. Daly ('896) discloses a system and method for managing network services which employs the use of a system management server in a computer network, (pending application p.4, lines 24-25; Daly ('896) Abstract and Col. 1, line 10), and the Internet, (Col.2, lines 50-67).

13. To use the system management server, computer network components and Internet applications of Daly within the service provision system and method of Cox would have been obvious to one of ordinary skill in this art at the time of invention by applicant, as indicated within Cox. The motivation to use a management server and computer network components within Cox is apparent by the incorporation of management aspects, (Col. 1, line 42-43), and computing platforms, (Col. 2, lines 42-

48), into the aforementioned system and method. Further, examiner believes the use of a management server and computers is inherent within the "intelligent network" described in Cox, (Col. 1, lines 6-12).

14. The motivation to apply the teachings of Cox to the Internet applications of Daly is the same as the motivation to incorporate Cox generally within Internet applications as indicated herein above. Moreover, Daly discloses the use of an email service, (Col. 2, line 67), which further implies an Internet application.

15. Therefore, Claims 27-34 and 36-40 are found to be unpatentable over Cox in view of Daly.

16. Examiner further acknowledges Applicants admission as to the teachings of Daly ('896) which "disclose a method for a management server to obtain information about service instantiations for the purposes of displaying the status of those instantiations on a management console, wherein the management server need not have been programmed to be aware of all of the types of services that is will actually deal with. This is achieved by storing service objects with the components of the service, these service objects being programmed to be aware of the specific service that the associated component can be used to instantiate. The sequestering of service-specific programming in these service objects permits the management server to be unaware of the details of the services it manages," (pending application p.4, lines 23-33 and p.5, lines 1-3).

17. Examiner also acknowledges Applicants summary of what elements are missing from Daly ('896) which, when combined with Daly would anticipate the limitations of the

pending application in its entirety. These elements, disclosed within Cox ('533), include the process and flexibility of instantiation of services, (Col.1, lines 31-43 and Col. 3, lines 46-51), the use of subscriber specified service attributes, (Col. 3, lines 52-63 and Col. 42, lines 28-58), and the transparent re-instantiation of services, (Col. 5, lines 13-16 and Col. 15, lines 10-60). Examiner believes these limitations to be anticipated by the prior art as incorporated herein above.

Conclusion


18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US PATENT 5,951,649 to Dobbins.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (703)-305-0717. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (703)-308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-305-6121.


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Arrienne M. Lezak
Examiner
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